

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICHARD SUNDAY IFILL,
Spiritual Leader of S.L.G. Youth Inc.,

Plaintiff,

-v-

DECISION and ORDER
08-CV-0700S

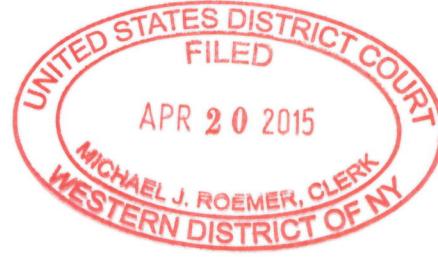
COMMISSIONER BRIAN FISCHER, et al.

Defendants.

Upon the filing of this *pro se* prisoner civil rights action pursuant to 42 U.S.C. § 1983 and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12112 *et seq.*, plaintiff's application to proceed *in forma pauperis* ("IFP") was denied on the bases that (1) his complaint was duplicative of a Third Amended Complaint, filed just one month prior to the filing of this action, in an earlier action plaintiff had pending in this Court, *Ifill v. Fischer*, 06-CV-0312S, and (2) he had made material misrepresentations in his IFP application. (Docket No. 3, Order.) Plaintiff was advised that if he failed pay the filing fee on or before a certain date, the complaint would be dismissed without prejudice. (*Id.*) Plaintiff did not pay the filing fee and the case was closed.

Plaintiff filed a notice of appeal from the Order denying his IFP application (Docket No. 4), and the United States Court of Appeals for the Second Circuit issued a Mandate that stated:

[I]nsofar that Appellant seeks review of the district court's denial of *in forma pauperis* status in relation to claims stemming from events that took place before Appellant filed his third amended complaint in *Ifill v. Goord*, W.D.N.Y. dkt. no. 06-cv-0312, the [Appellant's] motions [to proceed *in form pauperis* on appeal and for the appointment of counsel] are DENIED and the appeal is DISMISSED because it lacks an arguable basis in law or fact. See 28 U.S.C. § 1915(e);



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Nietzke v. Williams, 490 U.S. 319, 325 (1989). It is further ORDERED that, insofar as Appellant seeks review of the district court's denial of *in forma pauperis* status in relation to claims stemming from events that took place after plaintiff filed third amended complaint in *lfill v. Goord*, W.D.N.Y. dkt. no. 06-cv-0312, the motion for leave to proceed *in forma pauperis* [on appeal] is GRANTED for the purpose of vacating the district court's order and remanding the case to provide Appellant with notice and opportunity to respond before imposing sanctions. See *Newersa v. Merrill Lynch*, 174 F.3d 87, 92 (2d Cir. 1999) ("Due Process requires that courts provided notice and opportunity to be heard before imposing any kind of sanctions."); *cf. Curtis v. Citibank, N.A.*, 226 F.3d 133, 140 (2d Cir. 2000) ("Because claim preclusion would not bar litigation of events arising after the first amended complaint was filed in [the prior action], it was an abuse of discretion court's discretion to dismiss these claims as duplicative."

(Docket No. 6, Mandate.) Accordingly,

IT IS HEREBY ORDERED that, pursuant to the Second Circuit's Mandate, the Clerk of the Court is directed to re-open this case, and that plaintiff must respond, in writing, on or before **May 19, 2015**, to the Court's prior Order (Docket No. 3) denying his IFP application and show cause why his IFP application should not have been denied based on the material misrepresentations set forth in his IFP application (Docket No. 2);

FURTHER, that plaintiff is advised that if he fails to file a response to the Court's prior Order denying his IFP application and show cause why his IFP application should not have been denied based on the material misrepresentations set forth in his IFP application on or before **May 19, 2015**, this action will be dismissed without prejudice and the Clerk of the Court is directed to take all steps necessary to close this action.

SO ORDERED

Dated: 4/20, 2015
Buffalo, New York



WILLIAM M. SKRETNY
Senior United States District Judge